THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 13095 of 2004

Dated: 26.10.2006

Between:

Dargah Mohammad Yusuff, S/o D. Hussain Saheb, aged about 53 years, Conductor, H.No.1-13, Rangarajupet, Koilakuntla (PO), Kurnool District.

..... PETITIONER

AND

The Depot Manager, APSRTC, Koilakuntla Depot, Koilakunta, Kurnool District and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 13095 of 2004

Order:

This writ petition is filed seeking a Mandamus declaring the award dated 15.11.2002 passed by the Labour Court, Ananthapur, in I.D. No. 41 of 2000, in so far as not awarding the back wages and imposing punishment of deferment of two annual increments, as illegal and arbitrary.

2. The petitioner is working as a Conductor in the respondent-A.P.S.R.T.C. On 06.07.1998 while he was conducting the bus bearing No. AP Z 3233 on route Hyderabad to Koilakuntla, a check was exercised, and he was charge sheeted for certain cash and ticket irregularities. The petitioner submitted his explanation to the charges. Thereafter, an enquiry was conducted into the charges. The Enquiry Officer, having conducted the enquiry, held the charges proved. Based on the findings of the enquiry report, a notice calling upon the petitioner to show cause as to why he shall not be removed from service was issued. Upon considering the explanation submitted by the petitioner thereto, vide order dated 01.12.1998, the 1st respondent-Corporation ordered his removal. Against the order of removal, the petitioner filed an appeal and review before the authorities, which were rejected. Thereafter, the petitioner raised an industrial dispute in I.D. No. 41 of 2000 and the Labour Court, vide the award impugned in the writ petition, set aside the order of removal and directed the 1st respondent-Corporation to reinstate the petitioner into service with continuity of service but without back wages and imposed punishment of deferment of two annual increments. Assailing the award of the Labour Court in so far as denying the back wages and imposing punishment of deferment of two annual increments, the petitioner filed the present writ petition.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel for the 1st respondent-APSRTC.

4. The learned counsel for the petitioner submitted that when the Labour Court came to a conclusion that the petitioner is entitled for

reinstatement, automatically he is eligible for the back wages and that the award of the Labour Court in so far as denying the back wages and imposing punishment of deferment of two annual increments is disproportionate to the proved misconduct. He, thus, prayed to set aside the award passed by the Labour Court in so far as denying the back wages and imposing punishment of deferment of two annual increments and allow the writ petition.

5. Learned Standing Counsel for the 1st respondent-Corporation contended that the punishment imposed against the petitioner is not disproportionate to the proved misconduct. Given the misconduct, alleged against the petitioner, which stood proved, the petitioner has to be dismissed from service, but the disciplinary authority has imposed a lesser punishment of removal from service, and the Labour Court, on re-appreciation of the entire material on record and holding that the punishment of removal of the petitioner from service is not in proportion to the charges proved, modified the punishment and directed the 1st respondent-Corporation to reinstate the petitioner into service with continuity of service but without back wages and imposed punishment of deferment of two annual increments, and no interference is called for therewith.

6. The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are based on suspicion, conjectures or surmises or no reason. The law is well settled that this Court does not act as an appellate authority and reappraise the evidence while exercising certiorari jurisdiction. It is within these parameters, the impugned award of the Labour Court, is to be examined.

7. The petitioner, as can be seen from the award, did not allege any

procedural irregularity in the conduct of the enquiry. The petitioner was charge sheeted on four counts, namely (1) for having issued un-serial tickets of Rs.30/- denomination intentionally to two individual passengers, (2) for having failed to issue tickets of Rs.3/- denomination to two passengers, (3) for having failed to account for the sale of two tickets of Rs.30/- denomination in the SR, and (4) for having closed the tray numbers of all denominations up to stage No.12. In the departmental enquiry, the Enquiry Officer, on consideration of the statements of the TTIs and the petitioner, held that the charges leveled against the petitioner were proved. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court, on re-appreciation of the entire material on record, though found that the charges are proved against the petitioner, while observing that the punishment of removal of the petitioner from service is disproportionate to the charges proved, ordered reinstatement of the petitioner into service with continuity of service but without backwages and imposing punishment of deferment of two annual increments. Had the Labour Court held that the charges leveled against the petitioner are not proved, then the petitioner would have been justified in contending that he should be awarded backwages, but that is not the case. The Labour Court, having held that the charges leveled against the petitioner are proved, has taken a lenient view and ordered his reinstatement into service with continuity of service. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

8. Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (see **U.P. State Brassware Corpn.Ltd. v. Uday Narain Pandey**[1]). It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the

conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the Labour Court had passed orders in violation of the principles of natural justice. But the Labour Court has set aside the order of removal passed by the disciplinary authority, as confirmed by the appellate and review authorities, and ordered reinstatement of the petitioner into service on the ground that the punishment imposed was disproportionate to the proved misconduct.

9. In **Karnataka Bank Ltd. V. A.L. Mohan Rao**[2], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate and review authorities, was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

10. For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 26.10.2006
Nsr/Sj

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1 (2006) 1 SCC 479

2 (2006) 1 SCC 63